IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6378 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KISHOREKUMAR KANTILAL SHAH

Appearance:

1. Special Civil Application No. 6378 of 2001

MR M.R.MENGDEY, AGP for Petitioner No. 1-2

MR TR MISHRA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 17/11/2003

ORAL JUDGEMENT

Heard learned AGP Mr. M.R.Mengdey for petitioner and learned advocate Mr. T.R.Mishra appearing on behalf of respondent workman.

2. In the present petition petitioner has challenged the award passed by the Labour Court, Bhavnagar in Reference No. 598/1989 dated 27.2.2001 wherein the Labour Court, Bhavnagar has granted reinstatement with continuity of service and back wages from 5.5.1989 to 11.2.1990. At the time when this Court has issued notice, learned AGP Mr. R.V.Desai pointed out to this Court in respect to the contention raised in paragraph 11 of the award and submitted that in view of the observations, the learned Judge of the Labour Court, Bhavnagar, the award could not have been made for back wages and that is how the notice has been issued by this Court while keeping open the right of the petitioner to make submissions even for other points also. Thereafter, this Court has issued Rule on 4.12.2001 and directed the petitioner to reinstate the respondent workman on or before 31.12.2001. Against that order, learned AGP Mr.M.R.Mengday has submitted that the respondent workman has already been reinstated in service and at present is working with the petitioner. This Court has granted stay against the back wages from 5.5.1989 to 11.2.1990. This Court has also granted stay against the wages due from the date of award till 31.12.2001 and for that the respondent workman should have to file the affidavit before the Court to the effect that he has not been gainfully employed during the aforesaid period between the date of the award of the Labour Court and the date of reinstatement. The order passed by this Court on 4.12.2001 is quoted as under:

"Heard Mr. R.V.Desai, learned AGP for the petitioners and Mr. T.R.Mishra, learned counsel for the respondent-employee.

Having heard the learned counsel for the parties, the following order is passed:-

Rule. Till final disposal of the petition, there shall be ad-interim stay against the direction of the Labour Court for payment of backwages to the respondent-workman till the date of the award on condition that the respondent is reinstated by 31.12.2001. In other words, there is no interim stay against the direction of the Labour Court for reinstatement of the respondent-workman with continuity of service, but there shall be interim stay against the direction of the Labour Court for payment of backwages for the period from 5.5.1989 to 11.2.1990.

Although there is no interim stay regarding backwages for the period from the date of the award till 31.12.2001, the backwages for the said period shall be paid by the petitioners to the respondent-workman only after the respondent-workman files an affidavit before this Court that the respondent was not gainfully employed during the aforesaid period between the date of the award of the Labour Court and the date of reinstatement."

3. Now, in view of the interim order, respondent workman has been reinstated in service. The Labour Court has come to the conclusion that termination is found to be contrary to Section 25(f), (g) and (h) and, therefore, termination order has been set aside. There is a valid finding given by the Labour Court that workman though completed 240 days continuous service but prior to termination no notice or retrenchment compensation paid to the respondent workman by the petitioner. Meaning thereby that termination is found to be contrary under Section 25(f) of the Industrial Disputes Act. This finding is not challenged by the petitioner before this Court. Now, only question has been argued by the learned AGP in respect of the direction issued by the Labour Court about back wages. The back wages aspect has been discussed by the Labour Court in para 10 and 11. The Labour Court has considered that if the workman is reinstated in service, then whether during the interim period he has been gainfully employed or not. That question is required to be examined. The Labour Court has considered three letters dated 8.3.1990, 12.2.1990 and 19.3.1990. In all these three letters petitioner has offered the work to the respondent workman to report for duty as a permanent daily rated employee but the workman has refused on the ground that he is not prepared to come as a daily rated Peon because he was permanent Peon working with the petitioner, so the question has been examined by the Labour Court that though offer has been made by the petitioner in time to the respondent workman by addressing three letters to join his duty as a permanent daily rated Peon but workman has refused the same. Therefore, ultimately Labour Court has come to the conclusion that workman is not entitled any amount of backwages w.e.f. the letter of the petitioner dated 11.2.1990 but Labour Court has considered that in the facts of the present case Reference is against the challenge of termination which termination is found to be illegal then naturally workman is entitled the wages from from the date of termination till the first letter dated 11.2.1990 of the petitioner offering the work. It was

not the case of petitioner before the Labour Court that workman was remained in gainful employment during the period from 5.5.1989 to 11.2.1990, therefore, Labour Court has granted reinstatement with back wages from 5.5.1989 to 11.2.1990.

4. I have considered the submissions made by both the learned advocates appearing for the parties. According to my opinion, Labour Court has not committed any error while granting the limited backwages of interim period prior to the offer made by the petitioner. Labour Court has taken sufficient care not to grant single pie to the respondent workman from the date of offer made by the petitioner. Therefore, there is nothing wrong in granting the wages from 5.5.1989 to 11.2.1990, during that period workman was remained unemployed and there was no evidence produced by the petitioner before the Labour Court that workman was gainfully employed. Therefore, under such circumstances, termination itself is found to be illegal and contrary to Section 25(f) of the Act and that is not challenged by the petitioner. Only question of back wages is under challenge. Therefore, considering this fact, according to my opinion, Labour Court has rightly granted the limited back wages from 5.5.1989 to 11.2.1990. For that Labour Court has not committed any error while passing such award which require any interference by this Court while exercising the power under Article 227 of the Constitution of India. Hence, there is no substance in the present petition. Present petition is dismissed with no order as to costs. Rule is discharged. Interim relief, if any, stands vacated.

5. However, while admitting the matter, this Court has granted stay against the wages from the date of the award till the date of reinstatement subject to filing the affidavit by the respondent workman. Learned AGP has submitted that affidavit has been filed by the respondent workman to the effect that he remained unemployed from the date of the award till the date of reinstatement. In view of this fact, it is directed to the petitioner to pay the regular wages from the date of award till the date of actual reinstatement of the workman within a period of three months from the date of receiving the copy of this order.

(H.K.Rathod,J)

Jayanti*